

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 2.4.401 through 2.4.411 ) ON PROPOSED AMENDMENT  
pertaining to the Single Audit Act )

TO: All Concerned Persons

1. On May 30, 2007, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 18, 2007, to advise us of the nature of the accommodation that you need. Please contact Heather Voeller, Local Government Services Bureau, P.O. Box 200547, Helena, Montana 59620-0547; telephone (406) 841-2907; Montana Relay Service 711; facsimile (406) 841-2910; or email to hvoeller@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.4.401 ACCOUNTING AND FINANCIAL REPORTING STANDARDS

(1) All counties, cities, and towns shall adhere to the accounting and financial reporting standards adopted by the Governmental Accounting Standards Board (see ARM 2.4.411~~(1)~~).

(2) All counties, cities, and towns shall utilize the chart of accounts prescribed by the department in the budgetary, accounting, and reporting system for Montana cities, towns, and counties (see ARM 2.4.411~~(2)~~).

(3) and (4) remain the same.

AUTH: 2-7-504, 2-7-513, MCA

IMP: 2-7-504, 2-7-513, MCA

2.4.402 REPORT FILING FEE (1) As provided by 2-7-514~~(2)~~, MCA, each local government entity required to have an audit under 2-7-503, MCA, shall pay an annual filing fee to the department.

(2) remains the same.

(3) As required by 2-7-514~~(2)~~, MCA, the fee schedule shall be based upon the local government entity's annual revenue amounts.

(4) remains the same.

(5) Each local government entity except school districts shall pay the annual filing fee to the department at the time the entity files the annual financial report required by 2-7-503~~(4)~~, MCA, with the department.

- (6) For school districts and associated cooperatives:  
(a) as required by 2-7-514(2), MCA, the Office of Public Instruction shall pay the annual filing fee;  
(b) and (c) remain the same.  
(7) The annual filing fees for local government entities are as follows:

<u>Annual Revenues Equal to or Greater Than:</u>	<u>Annual Revenues Less Than:</u>	<u>Fee</u>
\$-0-	\$200,000	\$-0-
\$200,000	\$500,000	<del>\$175</del> <u>200</u>
\$500,000	\$ 1,000,000	<del>\$375</del> <u>435</u>
\$1,000,000	\$ 1,500,000	<del>\$525</del> <u>635</u>
\$1,500,000	\$ 2,500,000	<del>\$600</del> <u>760</u>
\$2,500,000	\$ 5,000,000	<del>\$675</del> <u>845</u>
\$5,000,000	\$10,000,000	<del>\$725</del> <u>890</u>
\$10,000,000	<u>\$50,000,000</u>	<del>\$775</del> <u>965</u>
<u>\$50,000,000</u>		<u>\$1,000</u>

This filing fee schedule is effective for annual financial reports for years ended June 30, ~~1997~~ 2007, and after. For annual financial reports for years ended June 30, 2008, and after, the annual filing fee for local government entities with annual revenues less than \$500,000 is zero.

AUTH: 2-7-514, MCA  
IMP: 2-7-514, MCA

2.4.403 PENALTY FOR FAILING TO FILE ANNUAL FINANCIAL REPORT WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION (1) As provided by 2-7-517(4), MCA, if a local government entity, other than a school district or associated cooperative, is unable to file its annual financial report with the department within six months of the end of the local government entity's fiscal year as required by 2-7-503(4), MCA, the department may grant an extension of time in which to file the financial report if the local government entity can demonstrate to the department that it has good cause for not submitting the report within the prescribed time.

(a) Good cause will be deemed to exist if the local government entity has exercised ordinary business care and prudence and was nevertheless unable to prepare and properly submit the annual financial report within the prescribed time.

(b) The department will determine what constitutes the exercise of ordinary business care and prudence based on the facts of each case.

(2) and (3) remain the same.

AUTH: 2-7-517, MCA  
IMP: 2-7-517, MCA

2.4.404 PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE (1) As provided by 2-7-514(2), MCA, local government entities

required to submit an annual financial report to the department must pay to the department, at the time the report is submitted, a filing fee as prescribed by ARM 2.4.402.

(2) and (3) remain the same.

(4) In addition to imposing the late payment penalty established in (3) ~~above~~, the department may issue an order to all state agencies requiring each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the required filing fee plus the late payment penalty.

(5) remains the same.

AUTH: 2-7-504, 2-7-517, MCA

IMP: 2-7-504, 2-7-517, MCA

2.4.405 AUDIT AND AUDIT REPORTING STANDARDS (1) All audits performed under 2-7-503, MCA, must be conducted in accordance with Government Auditing Standards, issued by the comptroller general of the United States (see ARM 2.4.411~~(3)~~), that are applicable to financial audits. ~~Those~~ These standards incorporate generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants.

(2) Audits must conform to the requirements of the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133 (see ARM 2.4.411~~(4)~~).

(3) All audit reports shall comply with the reporting standards for financial audits prescribed in Government Auditing Standards as established by the comptroller general of the United States, which incorporate the standards of reporting for financial audits prescribed by the American Institute of Certified Public Accountants (see ARM 2.4.411~~(3)~~).

(4) For audits conducted under the provisions of the OMB Circular A-133, the audit reports must comply with the reporting requirements of that circular (see ARM 2.4.411~~(4)~~).

AUTH: 2-7-504, 2-7-505, 2-7-513, MCA

IMP: 2-7-504, 2-7-505, 2-7-513, MCA

2.4.406 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES (1) Local government entity audits conducted under the provisions of Title 2, chapter 7, part 5, MCA, must be conducted by an independent auditor as defined by 2-7-501~~(6)~~, MCA. For purposes of this requirement, an "independent auditor" is:

(a) a federal, state, or local government auditor who meets the standards specified in Government Auditing Standards as established by the comptroller general of the United States; or

(b) a licensed accountant who meets the standards specified in Government Auditing Standards as established by the comptroller general of the United States (see ARM 2.4.411~~(3)~~).

(2) remains the same.

(3) In order to be placed on the roster, independent auditors must complete an application form prescribed by the department and meet the criteria set out in this section rule.

(4) through (6) remain the same.

(7) If an independent auditor is removed by the department from the roster as provided in (6) ~~above~~, the independent auditor must complete the application form prescribed by the department, meet the eligibility requirements set out in (5) ~~above~~, and pay the fee specified in (10) ~~below~~ in order to again be placed on the roster.

(8) and (9) remain the same.

(10) At the time of original application to the department for placement on the roster, and at the time the annual renewal form is submitted to the department, each independent auditor, including each office, shall pay to the department a fee of ~~\$50.00~~ 100.00.

(11) and (12) remain the same.

(13) Upon termination of a contract for a local government entity audit, if the local government entity fails to present a signed contract to the department for approval with the 90-day period in (12) ~~above~~, the department will designate an independent auditor to perform the audit as provided by 2-7-506~~(5)~~, MCA.

AUTH: 2-7-504, 2-7-506, MCA

IMP: 2-7-504, 2-7-506, MCA

#### 2.4.407 CRITERIA FOR THE SELECTION OF THE INDEPENDENT AUDITOR (1) remains the same.

(2) The department may require the local government entity to demonstrate that the independent auditor selected is qualified to conduct the audit based on an evaluation of:

(a) the criteria established in (1) ~~above~~;

(b) and (c) remain the same.

AUTH: 2-7-506, MCA

IMP: 2-7-506, MCA

2.4.408 AUDIT CONTRACTS (1) As provided by 2-7-506~~(3)~~, MCA, an audit of a local government entity by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government and the independent auditor.

(2) through (5) remain the same.

AUTH: 2-7-506, MCA

IMP: 2-7-506, MCA

#### 2.4.409 ACTIONS BY LOCAL GOVERNMENT ENTITY GOVERNING BODIES TO RESOLVE OR CORRECT AUDIT FINDINGS AND PENALTY FOR FAILURE TO DO SO (1) through (11) remain the same.

(12) If the department does not receive an acceptable response or corrective action plan within 30 days, it can request, pursuant to 2-7-515~~(3)~~, MCA, that state

agencies withhold payments of financial assistance from the local government entity pending receipt of an acceptable response or corrective action plan. The department, after consultation with the appropriate state agency or agencies, may designate the financial assistance payments to be withheld.

(13) and (14) remain the same.

AUTH: 2-7-515, MCA

IMP: 2-7-515, MCA

2.4.410 REVIEW OF FINANCIAL STATEMENTS (1) As provided by 2-7-503(3)(b), MCA, the governing body or managing or executive officer of a local government entity that is not required to have an audit based on the criteria established in 2-7-503(3)(a), MCA, shall at least once every four years, if directed by the department, or, in the case of a school district or associated cooperative, if directed by the department at the request of the superintendent of public instruction, cause a financial review to be conducted of the financial statements of the entity for the preceding fiscal year.

(2) A "financial review" is defined as an agreed-upon procedures engagement in which ~~the~~ an independent auditor is engaged to issue a report of findings based on specific procedures performed on subject matter in accordance with standards established by the American Institute of Certified Public Accountants [(see ARM 2.4.411(5))]. The procedures to be performed during the financial review of a specific type of local government entity are prescribed by the department and are specified in the contract referred to in (4).

(3) Financial reviews of a local government entity conducted at the direction of the department must be performed by an independent auditor, as defined by 2-7-501(6), MCA, who is on the department's roster of independent auditors authorized to conduct audits of local government entities.

(4) and (5) remain the same.

(6) A fee of \$75 will be charge to each entity required to have a financial review. Entities required to have a financial review will be notified in writing and the fee is due 60 days from the date of the department's letter notifying the entity of the financial review requirement.

~~(6) (7)~~ The provisions of 2-7-517(2), MCA, regarding the penalty for failing to pay an audit fee ~~applies~~ apply to the failure to pay a financial review fee.

~~(7) (8)~~ Reports on financial reviews must be prepared in accordance with reporting standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements [(see ARM 2.4.411)], and in addition must include any schedules specified in the contract referred to in (4).

(8) though (10) remain the same, but are renumbered (9) though (11).

AUTH: 2-7-503, 2-7-504, MCA

IMP: 2-7-503, 2-7-504, MCA

2.4.411 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS (1) The department ~~hereby~~ adopts and incorporates by this reference the Codification of

Governmental Accounting and Financial Reporting Standards adopted by the Governmental Accounting Standards Board as required standards for counties, cities, and towns, as provided by ARM 2.4.401.

(a) The standards incorporated by reference in (1), ~~above~~, contain the generally accepted accounting principles to be followed by state and local governments and the financial reporting requirements to be utilized by those governments.

(b) The Codification of Governmental Accounting and Financial Reporting Standards adopted by reference in (1), ~~above~~, may be obtained from the Governmental Accounting Standards Board, P.O. Box 5116, Norwalk, CT 06856-5116.

(2) The department ~~hereby~~ adopts and incorporates by reference the chart of accounts prescribed by the department in the Budgetary, Accounting and Reporting System for Montana Cities, Towns and Counties for use by counties, cities, and towns, as provided by ARM 2.4.401.

(a) and (b) remain the same.

(3) The department ~~hereby~~ adopts and incorporates by ~~this~~ reference the Government Auditing Standards established by the comptroller general of the United States for financial audits as required standards for independent auditors in conducting audits of local government entities, as provided by ARM 2.4.405.

(a) and (b) remain the same.

(4) The department ~~hereby~~ adopts and incorporates by ~~this~~ reference the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations," as requirements to which local government audits must conform, as provided by ARM 2.4.405.

(a) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 and the OMB Circular A-133 ~~incorporated by reference in (4)~~ relate to the following:

(i) through (xiv) remain the same.

(b) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 ~~adopted by reference in (4)~~ is codified as chapter 75 of Title 31 of the United States Code. The code is available at many public libraries and at law offices, and can be accessed at the following web site address:

<http://www.access.gpo.gov/uscode/uscmmain.html>

[http://www.access.gpo.gov/uscode/title31/subtitlev\\_chapter75\\_.html](http://www.access.gpo.gov/uscode/title31/subtitlev_chapter75_.html).

(c) The circular ~~adopted by reference in (4)~~ is available from the Federal Office of Management and Budget. A hard copy can be obtained by calling (202) 395-3080. It can also be accessed at the following web site address:

<http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

(5) The department ~~hereby~~ adopts and incorporates by ~~this~~ reference the standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements under which financial reviews of local government entities must be conducted, as provided by ARM 2.4.410.

(a) The These standards ~~adopted by reference in (5)~~ contain standards regarding the:

(i) through (vi) remain the same.

(b) The standards for agreed-upon procedures engagements ~~incorporated by reference in (5)~~ are contained in Section 201 of the Codification of Statements on Standards for Attestation Engagements, which may be obtained from the American Institute of Certified Public Accountants by calling (888) 777-7077 or at the following web site address: ~~CPA2BIZ, Order Department, P.O. Box 2209, Jersey City, NJ 07311-2209~~ <https://www.cpa2biz.com>.

AUTH: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA  
IMP: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

REASON:

The rule amendments eliminate the subsection references, e.g., ARM 2.4.411(4) as these are not necessary to locate the referenced information.

The rule amendments eliminate redundant and unnecessary verbiage and update addresses, phone numbers, and URLs.

The proposed amendment to the fee schedule in ARM 2.4.402 provides for an increase in the report filing fees. The fees are set based on the requirements in 2-7-514, MCA. That section requires that the fees must be based upon the costs incurred by the department in the administration of Title 2, Chapter 7, Part 5, MCA, and upon local government entities' revenue amounts. The department has experienced an increase in program costs and anticipates a negative working capital balance in the Audit Review Section at the end of fiscal year 2009 under the current fee structure. As a result, an increase in report filing fees is required to meet the provisions of 2-7-514, MCA. The proposed amendment also specifies an effective date for the increased fee schedule.

The amendment also reflects the passage of HB 487 which raised the revenue threshold for requiring an annual audit from \$200,000 to \$500,000 which will be effective for June 30, 2008, annual financial reports.

The proposed amendment to ARM 2.4.406 provides for an increase in the roster fee. The roster fee is provided for by 2-7-506, MCA. The fee has remained the same since inception in 1991.

As required by 2-7-503, MCA fees for financial reviews must be charged based upon the costs incurred by the department in relation to the financial review. The proposed amendment to ARM 2.4.410 establishes a fee for financial reviews to comply with this requirement.

It is estimated that the approximately 500 entities will be affected by the change in the audit report filing fees, which will generate an estimated \$45,000 in annual revenue. The increase in the roster fee will affect approximated 55 entities and generate approximately \$2,750 in annual revenues. The fee for financial review is expected to affect approximately 50 entities and generate approximately \$3,750 in annual revenues.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kay Gray, Bureau Chief, Local Government Services Bureau, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; e-mailed to kaygray@mt.gov, and must be received no later than May 28, 2007.

6. Kay Gray, Bureau Chief, Local Government Services Bureau, has been designated to preside over and conduct the hearing.

7. The Local Government Services Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Heather Voeller, Local Government Services Bureau, 301 South Park Avenue – Room 340, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; emailed to hvoeller@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BY: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

BY: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State April 30, 2007.